

July 14 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Honorable Jim Bailey
Justice of the Peace, Dept. 2
Ravalli County Justice Court
205 Bedford Street, Suite F
Hamilton, Montana 59840
Telephone: 406-375-6765

FILED

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

The Office of the State Public Defender)	
Petitioner)	
)	Case No. OP 10-0331
vs)	
)	Respondent's Response to Petitioner's
Hon. Jim Bailey)	"Petition for Writ of Mandamus"
Ravalli County Justice of the Peace)	
Respondent)	

On July 2, 2010, the Respondent received notice that the Petitioner filed a "Petition for Writ of Mandamus" with the Court.

At issue in this case is Petitioner's allegation that the Respondent has refused to conduct rescission hearings in cases where the Office of the State Public Defender has filed a "Motion to Rescind" and an "Order" has, subsequently, been issued by my Court. The Petitioner has stated that "*Respondent tells such individuals, after signing a rescission order based on the motion filed by OPD, that he does not conduct rescission hearings and sends them back to OPD to 'reapply'*". Petitioner is seeking a Writ of Mandate to compel the Respondent to hold a rescission hearing and not tell people to "reapply" for public defender representation.

Respondent responds to the Petition as follows:

1. Respondent acknowledges provisions #1, #2, #3, #4, #5, #6, #7, #8, #11, and #12 of the Petition for Writ of Mandamus.
2. In answer to provision #9 of the Writ, the Respondent states that he has never refused to conduct a rescission hearing; in fact, at the time Respondent was served with the Petition for Writ of Mandamus [July 2, 2010], not one individual had ever requested a rescission hearing. Interestingly, on July 9, 2010, a Defendant did appear at Ravalli County Justice Court to request such a hearing, and it was immediately granted.
3. With regards to provision #10, Respondent acknowledges that he has, on occasion, advised a Defendant that he or she can reapply to the Office of Public Defender if their financial circumstances have changed. In recent times, I can recall two Defendants who appeared in Court and indicated that they had lost their jobs; I suggested that they contact the Office of Public Defender and reapply for counsel. At no time have I ever told a Defendant to simply "reapply" after a Motion and Order of Rescission was issued.

4. Provision #13 of the Petition is seeking a remedy that is already standard procedure in my Court of law. The Respondent is fully aware of a Defendant's right to a rescission hearing, and any Defendant that makes such a request, whether it be oral or written, is granted such a hearing.

5. Respondent adamantly denies provision #14 which states that "*respondent refuses to conduct hearings of any kind or reviews of any kind*". The statement is simply not true.

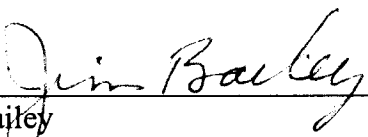
6. Respondent denies that Petitioner should be awarded attorney fees.

Frankly, the Respondent is completely perplexed with the situation at issue. The Petitioner is seeking relief for a situation that does not exist. Not one Defendant has been denied a rescission hearing by this Court. Not one Defendant has ever been told to simply reapply for a public defender if they don't agree with the OPD's finding that they do not qualify for a public defender. And for the Petitioner to request attorney fees for bringing an unwarranted action before this Court is wholly without merit.

Interestingly, the Petitioner chose to initiate an action with the Supreme Court and circumvent any communications directly with my office about this situation. If Petitioner perceived a problem, a letter of inquiry or a telephone call could have clarified the situation.

In conclusion, the Petitioner is seeking what already is. The Respondent has never told a Defendant that he does not conduct rescission hearings, and the Respondent has never denied any request for a rescission hearing. If a Defendant requests a rescission hearing or review, it is granted.

Dated 7/12/10




Jim Bailey

CERTIFICATE OF SERVICE

The undersigned certifies that on July 16, 2010, she mailed a copy of "Respondent's Response to Petitioner's 'Petition for Writ of Mandamus'" to the undersigned by first class mail:

Edmund F. Sheehy, Jr.
Office of State Public Defender
610 Woody Street
Missoula, MT 59802



Linda Chinn, Clerk for Jim Bailey